88-765

Supreme Court, U.S.
FILED
OCT 12 1988
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM,1988

No. A-160

THANH VONG HOAI,

Petitioner,

v.

THANH VAN VO; THACH DUY NGUYEN; MY-LINH D. SOLAND; NGUYEN THI BACH LUU; THANH VAN VO, d/b/a SUNTECH SUNOCO,INC.;AND MICHAEL ARIF,

Respondents.

ANNEX NUMBER I TO

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
(FOURTH CIRCUIT)

LAURENCE A ELGIN
JOHN D. HEMENWAY
4816 Rodman St., N.W
Washington, D.C. 200

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IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF VIRGINIA
(ALEXANDRIA DIVISION)

Civil Action Number
87-0294-A

THANH VONG HOAI,
Plaintiff,

v.

THANH VAN VO, et al.,
Defendants.

ORDER

This matter came before the Court on May 8, 1987, on defendants' motion to dismiss and plaintiff's motion to amend the complaint. For reasons stated from the bench, it is hereby

ORDERED that the plaintiff is GRANTED ten (10) days in which to file an amended complaint and the defendants to answer twenty (20) days thereafter.

/s/ Claude M. Hilton
UNITED STATES DISTRICT JUDGE

Alexandria, Virginia

Date: May 8, 1987

IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF VIRGINIA
(ALEXANDRIA DIVISION)

Civil Action Number
87-0294-A

THANH VONG HOAI,
Plaintiff,

v.

THANH VAN VO, et al.,
Defendants.

ORDER

This matter came before the Court on defendants' motions to dismiss, and for reasons stated from the bench, it is hereby

ORDERED that the RICO and Security Act claims are DISMISSED and all remaining State claims are DISMISSED without prejudice.

/s/ Claude M. Hilton
UNITED STATES DISTRICT JUDGE

Alexandria, Virginia

July 2, 1987

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 87-2135

THANH VONG HOAI,
Plaintiff-Appellant

v.

THANH VAN VO, et al.,
Defendants-Appellees.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Claude M. Hilton, District Judge.(CA-87-0294-A)

Argued: March 11, 1988 Decided: May 19,1988

Before HALL and WILKINS, Circuit Judges, and BRITT, United States District Judge for the Eastern District of North Carolina, sitting by designation.

Laurence A. Elgin (John D. Hemenway; D. Curtis Danielson on brief) for Appellant; Thomas A. Gentile; Alan H. Yamamoto; Michael Holm (Alan B. Croft; Hazel, Thomas, Fiske, Beckhorn & Hanes, P.C. on brief) for Appellees.

PER CURIAM:

Thanh Vong Hoai appeals from two orders of the district court dismissing his original com-

plaint and dismissing his civil RICO action.[1] Hoai charged that appellees conspired together to defraud him of his capital in two business ventures in violation of the civil RICO statute, 18 U.S.C. Section 1961 et seq.

On appeal, Hoai argues that the district court erred in dismissing his original complaint pursuant to Rule 8(e)[2] and in dismissing his amended complaint for lack of sufficient allegations to allege the existence of an enterprise and a pattern of activity under the RICO count. Upon review of the record, briefs and oral argument, we conclude that appellant's contentions lack merit and affirm for the reasons expressed by the district court from the bench.

AFFIRMED

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[1] Hoai had originally alleged violations of the Securities and Exchange Act and several state causes of action which the district court also dismissed. However, Hoai does not argue these issues in his brief.

[2] The original complaint was 133 pages long, contained 24 separate counts and was supported by a 285-page affidavit.

JUDGMENT
UNITED STATES COURT OF APPEALS
for the
Fourth Cirduit

No. 87-2135

THANH VONG HOAI,
Plaintiff-Appellant

v.

THANH VAN VO, et al.,
Defendants-Appellees

APPEAL FROM the United States District Court for the Eastern District of Virginia,

THIS CAUSE came on to be heard on the record from the United States District Court for the astern District of Virginia,
and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court appealed from, in this cause, be, and the same is hereby,

Affirmed.

/s/ John M. Graecen
CLERK

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 87-2135

Thanh Vong Hoai,

Plaintiff-Appellant,

v.

Thanh Van Vo, et al,

Defendants-Appellees.

On Petition for Rehearing with Suggestion for Rehearing In Banc

---

The appellant's petition for rehearing and suggestion for rehearing in banc were submitted to this Court. As no member of this Court of the panel requested a poll on the suggestion for rehearing in banc, and

As the panel considered the petition for rehearing and is of the opinion that it should be denied,

IT IS ORDERED that the petition for rehearing and suggestion for rehearing in banc are denied.

Entered at the direction of Judge Hall, with concurrence of Judge Wilkins and Judge Britt, United States District Judge sitting by designation.

For the Court

/s/John M. Graecen
CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

THANH VONG HOAI,
Plaintiff
v. CA No. 87-294-A

THANH VAN VO, et al.,
Defendants.

Alexandria, Virginia

Friday, May 8, 1987

The proceedings commenced at 11:00 am

BEFORE:

THE HONORABLE CLAUDE M. HILTON.

* * * Page 13 of Transcript * * *
(Jt. Appendix 791)

THE COURT: Well, that's right. You can't plead a conclusion, but y ou still don't have to plead 10 separate Rico conspiracies. What you've representing here, you don't have that.

MR. ELGIN: You have two separate schemes to take two separate business and you have a number--

THE COURT: By the same people.

MR. ELGIN: Yes, and you have a number of defendants.

THE COURT: Why isn't that one scheme as opposed to two?

MR. ELGIN: Well, I would say we would have to conduct more discovery to be certain of that. We allege that and we feel that's the case. We are uncomfortable in going out on that limb at [t]his point until further discovery is conducted.

This is what a number of these opposing cases to the Bach case point out, that the civil attorney can't be held to the same standard as the criminal attorney because he doesn't have the same tools to get the information out until he gets into discovery.

THE COURT: Well, I'll tell you I've glanced through this. I haven't read it in detail. It is 130-some pages and I've been through Rico complaints where I got a little aggravated after the 35th page. I think this thing has got to be redone and brought into focus as to what you're doing. You do have to set forth the fraud act, your Rico count with

particularity, but alleging 10 separate Rico conspiracies with all the repetition involved in that when in fact what you've got is one -- you say two separate conspiracies.

* * * HEARING OF JULY 2, 1987 * * *
J. Claude M. Hilton
(Jt. Appendix, p. 811)

THE COURT: This was one sale of two businesses, wasn't it? Wasn't this one transaction?

MR. ELGIN: No, not really. At first the plaintiff, our client, he didn't know of the connection between what he thought were two--He didn't realize that basically what was going on that he didn't know of the connection between what he thought were two--he didn't realize that basically what was going on that he didn't know about was that they were using the one offer to draw out his capital that they knew he had so he wouldn't have it to hold the other business. He didn't know that.

THE COURT: That may be. But it was one transaction for the purchase of two businesses? It was dis-

cussed at the same time.

MR. ELGIN: Not until very late in the game did that ever happen. In other words, when he set out to purchase them, he thought he was buying two different businesses from two different sets of people.

THE COURT: I understand. But it was one set-out to buy two businesses?

MR. ELGIN: No. He set out to buy one business, but then he was persuaded by two of the defendants to invest in the other business when he informed them of his situation, his available capital, his purchase of the gas station business and so forth. It was at this point that they conceived the scheme and then struck....

* * * End of Exerpt from July 2,1987* * *
(Joint Appendix p.812)

CERTIFICATE OF SERVICE

The undersigned certifies that this 12th day of October, 1988, he served three (3) copies of Petitioner Thanh Vong Hoai's "Petition For Writ of Certiorari to the United States Court of Appeals (Fourth Circuit)" and related Annexes I and II, also three (3) copies each, by U.S. Mail, first class, all postage pre-paid, to the following attorneys representing the parties in the court below in the within captioned matter:

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